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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 1, 1999

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PUE980334

SANVILLE UTILITIES CORP.,

Defendant

FINAL ORDER

On September 27, 1999, the Staff of the State Corporation Commission ("Staff") filed a Motion Requesting Expedited Hearing for Appointment of Receiver ("Motion"). In its Motion, the Staff stated that Sanville Utilities Corp. ("Sanville" or "the Company") had failed to comply with the Commission's November 25, 1998, Order requiring the Company to provide adequate sewer services in the Fairway Acres subdivision in Henry County, Virginia. The Staff also recited numerous recent events concerning the treatment plant at Fairway Acres and problems with the water systems at the Rockhill and Westwood subdivisions in Henry County, also owned and operated by Sanville. The Staff also presented correspondence from Richard M. Anthony, owner of Sanville, indicating his desire to abandon the Fairway Acres wastewater treatment plant.

By Order entered September 29, 1999, we granted the Staff's request for expedited hearing, concluding that, due to the apparent imminent threat to the public health as alleged by Staff, we should conduct a hearing on the morning of September 30, 1999. Arrangements were made for telephonic participation by interested parties. The Clerk of the Commission was directed to serve a copy of the September 29 Order on Mr. Anthony by facsimile and overnight mail. The Staff provided a facsimile copy of our Order to the Virginia Department of Health.

On September 30, 1999, the Commission convened the hearing on the Motion. Entering appearances at the hearing either in person or by telephone were M. Renae Carter, Esquire, and William H. Chambliss, Esquire, representing the Commission Staff; and Judith Williams Jagdmann, Esquire and Deborah Love Feild, Esquire, representing the Office of the Attorney General and the Virginia Department of Environmental Quality. Mr. Anthony participated by telephone and appeared pro se. Also present at the proceeding were Tim Baker, Mike Painter, and Robert A. K. Payne from the Virginia Department of Health; Tom Henderson from the Virginia Department of Environmental Quality; and Sidney A. Clower, Henry County Administrator and General Manager of the Henry County Public Service Authority ("PSA").

At the outset of the hearing, Mr. Anthony stated that he would not contest the Staff Motion and that he consented to the

receivership. Mr. Anthony advised that he did not contest any of the allegations contained in the Motion concerning conditions prevailing at the sewage treatment and water facilities, other than the complaints of individual customers regarding the origins of odors in the vicinity of their homes and certain sewer back-ups into homes. Mr. Clower represented that the Henry County PSA was willing and able to act as receiver for all of Sanville's assets.

NOW THE COMMISSION, upon consideration of the Staff's Motion, the admission and consent of Mr. Anthony and the further record developed at the hearing, as well as the applicable statutes and rules, is of the opinion and finds that at least two of the four conditions precedent to the appointment of a receiver, as set out in § 56-265.13:6.1 of the Code of Virginia, exist and apply to Sanville. We find that Sanville has "failed to supply water or sewer service to a majority of the consumers for five days or more during the preceding three months for reasons within the control of the water or sewer utility," and that the utility "has failed to comply with an order of the Commission to provide adequate service to the customers." Va. Code § 56-265.13:6.1 A 1 and 4. We further find that Sanville is unwilling or unable to provide reasonably adequate water and sewer services, as is required by § 56-265.13:6.1 of the Code of Virginia and that a receiver should be appointed to take possession of the utility's assets and to operate these in the

best interests of the utility's customers. We further find that we should appoint the Henry County PSA as Receiver to operate the Sanville utility assets, including the Fairway Acres sewer system and treatment plant, the Westwood and Rockhill water systems, and the Westwood sewage lagoon. We will grant the PSA all necessary authority to operate these systems to furnish reasonably adequate water and sewer services, including, particularly, the authority to contract with the Virginia Department of Environmental Quality for resources provided by and through the Virginia Environmental Emergency Response Fund. Additionally, we find that Mr. Anthony and all other persons except the PSA and its agents should be restricted from taking any further actions on behalf of Sanville.

Accordingly, IT IS ORDERED THAT:

(1) The Henry County Public Service Authority hereby is appointed Receiver of Sanville Utilities Corp. and is vested, in addition to the powers set forth herein, with all the powers and authority expressed or implied under the provisions of § 56-265.13:6.1 and of §§ 8.01-583 to -590 of the Code of Virginia. The Receiver is authorized to do all acts necessary or appropriate for the conservation or rehabilitation of Sanville including, but not limited to, the following:

- (a) to maintain immediate and exclusive possession and control of Sanville, including its assets, cash, bank accounts, contracts, causes of action, books, records and property, including such property of Sanville which may be discovered hereafter;

- (b) to acquire, invest, deposit, hypothecate, encumber, lease, improve, sell, transfer, or otherwise dispose of or deal with any of the assets and property of Sanville, including any real property;
- (c) to borrow money on the security of Sanville's assets, with or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the receivership;
- (d) to operate and transact business for Sanville;
- (e) to collect all debts and monies due and claims belonging to Sanville;
- (f) to enter into any contracts necessary to carry out this Order, and to affirm any contracts to which Sanville is a party;
- (g) to make distribution and payment to creditors and members as their interests may appear;
- (h) to receive, examine, and pass upon claims made against Sanville, including authority to sue, intervene in, and defend any actions in the name of the Receiver or its agent or in the name of Sanville;
- (i) to remove any or all records and other property of Sanville to the offices of the Receiver or to such other place as may be convenient for the purposes of the efficient and orderly execution of the receivership; and to dispose of or destroy, in the usual and ordinary course, such of those records and property as the Receiver may deem or determine to be unnecessary for the receivership;
- (j) to assign, extend, discharge in whole or in part, or foreclose any mortgage of real or personal property standing in the name of Sanville individually or held by Sanville in any fiduciary capacity, and to subordinate the lien of any such mortgage to any other mortgage, lease, or other interest, and to initiate and to defend any action with respect to any such mortgage;
- (k) to sell, lease, convey, grant assessments or other interest in, enter agreements with respect to, and to initiate and defend any action with respect to any real estate acquired by Sanville individually or held by Sanville in any fiduciary capacity;

- (l) to sign, seal with the corporate seal, acknowledge and deliver all pleadings, affidavits, deeds, contracts, releases, discharges, certificates, leases, assents, grants and other instruments necessary or appropriate to carry out the foregoing powers, and such execution shall in each case be conclusive as to the authority of the executing officer;
- (m) to employ and to fix the compensation of such employees, counsel, accountants, consultants, assistants, and other personnel as the Receiver considers necessary;
- (n) to change to the Receiver's own name the name of any of Sanville's accounts, funds, or other property or assets held with any bank, savings and loan association or other financial institution, wherever located, and to withdraw such funds, accounts, and other assets from such institutions or take any lesser action necessary for the proper conduct of the receivership;
- (o) to perform such further and additional acts as the Receiver may deem necessary or appropriate for the accomplishment of or in aid of the purpose of the receivership.
- (p) to contract for and receive funding from the Virginia Department of Environmental Quality and other sources as necessary to abate conditions threatening the public health or safety.

(2) The Receiver shall obtain the prior written approval of the Commission with respect to any action taken pursuant to subparagraphs (b), (c), (j) or (k) of paragraph (1) above.

(3) The current owners, officers, directors, trustees, agents, and employees of Sanville hereby are restrained from transacting any further business and are restrained from transferring, removing, or disposing of any property or business until further Order of the Commission.

(4) Sanville, its officers, directors, trustees, agents, and employees, and all other persons having any property or records belonging to Sanville, including data processing information and records of any kind, hereby are directed to assign, transfer, and deliver to the Receiver all of such property in whatever name the same may be held, and any persons, firms or corporations having any books, papers or records relating to the business of Sanville shall preserve the same and submit these to the Receiver for examination at all reasonable times.

(5) Until further order of the Commission, all persons, corporations, partnerships, associations and all other entities, wherever located, hereby are enjoined and restrained from interfering in any manner with the Receiver's possession of the property or its right therein and from interfering in any manner with the conduct of the receivership of Sanville, including wasting, transferring, selling, disbursing, disposing of, or assigning property or attempting to do so.

(6) No bank, savings and loan association or other financial institution shall, without first obtaining permission of the Receiver, exercise any form of set-off, alleged set-off, lien, or other form of self-help whatsoever or refuse to transfer property to the Receiver's control.

(7) All secured creditors or parties, pledge holders, lien holders, collateral holders, or other persons claiming secured,

priority or preferred interest in any property or assets of Sanville, including any governmental entity, hereby are enjoined from taking any steps whatsoever to transfer, sell, encumber, attach, dispose of or exercise purported rights in or against the property. However, notwithstanding any other provision of this Order, the commencement of conservatorship, receivership, liquidation or other delinquency proceedings against Sanville in another jurisdiction by an official lawfully authorized to commence such a proceeding shall not constitute a violation of this Order.

(8) No judgment, order, attachment, garnishment sale, assignment, transfer, hypothecation, lien, security interest or other legal process of any kind with respect to or affecting Sanville or its property shall be effective or enforceable or form the basis for a claim against Sanville or its property unless entered by the Commission or unless the Commission has issued its specific order, upon good cause shown and after due notice and hearing, permitting same.

(9) Except as otherwise specifically provided by law, the Receiver and its employees, counsel, accountants, consultants, assistants, and other personnel are deemed to be public officers acting in their official capacity on behalf of the state and shall have no personal liability for or arising out of their acts or omissions performed in good faith in connection with



this or related proceedings or pursuant to this or related orders.

(10) The Receiver shall make quarterly reports to the Commission's Division of Energy Regulation to keep the Commission informed of the status of operations at Sanville's utility facilities and the status of Sanville's debts and to provide any other information that the Commission's Staff may request.

(11) The Receiver forthwith shall provide notice of the receivership to all of Sanville's customers. Such notice shall inform the customers that the Henry County PSA has been appointed Receiver for Sanville and will now operate all of Sanville's utility systems. The notice also shall instruct the customers how, where, and when to submit payments for services rendered by the Receiver and provide information for customers to contact the PSA in case of service difficulties. The notice shall be approved by the Commission's Office of General Counsel before being sent to customers.

(12) All costs, expenses, fees, or any other charges of the Receivership, including but not limited to fees and expenses of those persons listed in paragraph (1)(m) above and the giving of notice required herein, shall be paid from the assets of Sanville.

(13) The Receiver may at any time make application for such further relief as it sees fit, including any application for an

increase in rates or for other changes to the terms and conditions and rules and regulations of Sanville's water and sewer services.

(14) The Receiver is authorized to deliver to any person or entity a certified copy of this Order, or of any subsequent order of the Commission, such certified copy, when so delivered, being deemed sufficient notice to such person or entity of the terms of such Order. But nothing herein shall relieve from liability, nor exempt from punishment by contempt, any person or entity who, having actual notice of the terms of any such Order, shall be found to have violated the same.

(15) The Commission Staff shall confer with the Receiver on a Plan of Receivership and they shall file a Plan of Receivership on or before October 29, 1999.

(16) This matter is continued for further orders of the Commission.

This Order is effective as of 10:40 a.m., Thursday, September 30, 1999, and shall remain in effect until modified or withdrawn by the Commission, which shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

The Commission wishes to commend the Henry County Public Service Authority for its agreement to serve as Receiver in this matter and for the assistance it has rendered to this Commission and to the customers of Sanville in the restoration of utility services.